Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation	)	CC Docket No. 92-256

GTE's REPLY COMMENTS

GTE Service Corporation and
its affiliated domestic
telephone operating companies

Richard McKenna, HQE03J36
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(214) 718-6362

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5214

Their Attorneys

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TABLE OF CONTENTS

SUMMARY

1. GTE urges the Commission not to replace GTE's practical and successful good faith efforts with rigidly mandated and far more costly mechanisms.

2. The scarcity of complaints against GTE, now as in 1987, supports GTE's position that it does not act in an anticompetitive manner.

3. The Commission should reject MCI's arguments founded on a Free Good philosophy. GTE is already in compliance with the "same form of access" requirement. Neither MCI nor any other party has made any effort to show providing OSS access for ESPs would be technically or economically viable under the FCC's four ONA *Feasibility Criteria.*

4. No party challenges the conclusion that, under the criteria applied by the FCC in the past, the argument for separate treatment of GTE is even stronger.

5. No party shows any ONA/CEI benefit that is not currently being provided without imposition of a rigid and costly mechanism.

6. The least damaging way to impose all or some portion of the *BOC Requirements* on GTE would be to formalize GTE's existing practices.

7. To the extent Bell Atlantic is arguing for elimination of unnecessary regulation, GTE agrees with Bell Atlantic. Extending unnecessary regulation to a new party is not a valid solution.

8. National Association of Broadcasters' argument is grounded on the mistaken premise that GTE has been subject to a separate subsidiary requirement.

9. The various concerns expressed by the State of Hawaii are unfounded.

10. The Commission should adopt neither the proposed filing plan nor the time table for implementation.

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GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE"), with reference to the Notice of Proposed Rulemaking (the *Notice* or *NPRM*), 7 FCC Rcd 8664 (1992), and various filed comments, submit the following reply comments:

BACKGROUND

The *Notice* proposes to apply to GTE the *BOC Requirements* discussed in GTE's Comments at 2-4.[1]

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[1] *See* "*Computer III*", *Amendment of Section 64.702*, CC Docket No. 85-229, Phase I, Report and Order, 104 F.C.C.2d 958 (1986) ("*Phase I Order*"), *reconsideration*, 2 FCC Rcd 3035 (1987) ("*Phase I Reconsideration Order*"), *further reconsideration*, 3 FCC Rcd 1135 (1988) ("*Phase I Further Reconsideration Order*"), *second further reconsideration*, 4 FCC Rcd 5927 (1989) ("*Phase I Second Further Reconsideration Order*"); *Phase I Order and Phase I Reconsideration Order vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987) ("*Phase II Order*"), reconsideration, 3 FCC Rcd 1150 (1988) ("*Phase II Reconsideration Order*"), further reconsideration, 4 FCC Rcd 5927 (1989) ("*Phase II Further Reconsideration Order*"); *Phase II Order vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceeding*, CC Docket No. 90-368, 5 FCC Rcd 7719 (1990) ("*ONA Remand Order*"), *reconsideration*, 7 FCC Rcd 909 (1992), *petitions for review pending sub nom. California v. FCC*, No. 90-70336 (and consolidated cases) (9th Cir. filed July 5, 1990); *Computer III Remand Proceeding: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) ("*BOC Safeguards Order*"), *petitions for reconsideration pending, petitions for review pending sub nom. California v. FCC*, No. 92-70083 (and consolidated cases) (9th Cir. filed February 14, 1992); *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988) ("*BOC ONA Order*"), *reconsideration*, 5 FCC Rcd 3084 (1990) ("*BOC ONA Reconsideration Order*"), 5 FCC Rcd 3103 (1990) ("*BOC ONA Amendment Order*"), Erratum, 5 FCC Rcd 4045, *modified*, FCC 92-535 (released January 4, 1993) ("*BOC ONA Amendment Reconsideration Order*"), *petitions for review pending sub nom. California v. FCC*, No. 90-70336 (and consolidated cases) (9th Cir. filed July 5, 1990), 6 FCC Rcd 7646 (1991)

DISCUSSION

I. GTE URGES THE FCC NOT TO REPLACE GTE'S PRACTICAL AND SUCCESSFUL GOOD FAITH EFFORTS WITH RIGIDLY MANDATED AND FAR MORE COSTLY MECHANISMS.

There are several interrelated points that GTE wishes to address briefly at the outset because this will serve to put in focus the entire pleading. These points all concern the cost impact of imposing the *BOC Requirements* on GTE.

MCI (at 4) maintains that application of the "[ONA] regime and related nondiscrimination rules" to GTE would produce only "minimal benefits." Nonetheless, MCI (*id.*) insists the Commission should apply these requirements to GTE "simply because the cost of applying ONA to GTE is so slight that even the minimal benefits that will be derived from applying ONA to GTE will be justified."

It is shown in GTE's Comments (at 4 and Attachment A) that the cost of applying the *BOC Requirements* to GTE is by no means slight. It would cost GTE nearly $20 million the first year, $36 million over five years, and $51 million over ten years. *Id.* Costs of these dimensions demand careful consideration.[2] GTE agrees with MCI (for different reasons) that the benefits of applying to GTE the *BOC Requirements* would be "minimal"; but the associated costs would far exceed any supposed benefits.

As in the case of MCI, Sprint (at 1) finds no real benefit in applying the *BOC Requirements* to GTE. Unlike MCI, Sprint (at 4) recognizes the heavy costs that would

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("*BOC ONA Further Amendment Order*"), *petition for review pending sub nom. MCI Telecommunications Corp. v. FCC*, No. 92-70189 (9th Cir. filed February 19, 1992).

[2] The figures cited in GTE's Comments and these Reply Comments are conservative in that "best case" assumptions have been used. For example, CPNI polling cost estimates assume there would be no need for follow-up activities. GTE believes the costs of imposing the *BOC Requirements* are likely to exceed the cited estimates.

be incurred by GTE and sees no need for "a largely wasted expenditure given the expected lack of demand for the service at issue."[3]

The State of Hawaii, through its Division of Consumer Advocacy, maintains (at n.10) that imposition of the *BOC Requirements* would "provide an opportunity for [GTE] to realize increased revenues from additional business access." The State provides no indication of the source from which this increased revenue would be derived. Presumably, the State has in mind that the number of GTE services would increase by virtue of the ONA program. But GTE on its own initiative has implemented the equivalent of ONA. The services offered of GTE are comparable to those offered by the BOCs in function and number. *See* GTE's Comments at Attachment U. The simple reality is there would be no increase whatever in GTE's revenue by the mere fact of implementing the *BOC Requirements*.

The State of Hawaii may be assuming there would be an upward rate adjustment in access charges to cover these cost increases. But no such assumption can be made inasmuch as:

> (i) GTE is a Price Caps exchange carrier. Absent Commission action permitting exogenous treatment (which undoubtedly would be opposed by the State of Hawaii), GTE's rates would not be increased to reflect the increased costs caused by imposing the *BOC Requirements*.
>
> (ii) With GTE responding to an increasingly competitive environment, its access prices are generally below the maximum level allowed under Price Caps. The assumption that the market would justify a decision to

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[3] Sprint (at 3-4) says "Given the lack of benefits, and the real burdens, associated with unbundling feature group access arrangements, it is not clear why the Commission should consider extension of ONA requirements to GTE to be in the public interest. There is no reason to believe that GTE's experience with ONA will be substantially different from that of the BOCs'. Insofar as Sprint is aware, GTE has received no requests from ESPs or IXCs for ONA services in their current form."

increase access prices is not only unsubstantiated but wrong. This is not mere rhetoric. GTE's existing pricing level below the ceiling imposed by Price Caps shows that GTE recognizes its services must be competitively priced.

The simple fact is imposing the *BOC Requirements* would create substantial costs for GTE with no compensating increase in revenues.

Turning to the nature of the costs that would be imposed, virtually all the start-up costs associated with implementing the *BOC Requirements* would be incurred **whether they apply to GTE operations in one state, ten states, or forty states.**[4] The far-fetched suggestions of the State of Hawaii (at 5) and The Association of Telemessaging Services International, Inc. ("ATSI") (at 14) that GTE is discriminating against Hawaii or allocating to Hawaii a disproportionate share of costs reflect a failure to grasp the nature of the expenditures. The modification of the Operational Support System ("OSS") software needed for GTE to implement the rigid procedural requirements imposed on the BOCs would generate **significant costs that will not vary with the number of states or locations where the software must be installed.** Indeed, the proportionate cost of imposing the *BOC Requirements* in one state or a small number of states would -- other things being equal -- prove to be heavy when applied to customers in only the state(s) affected.

GTE complies with the spirit of the FCC's policy. Mechanisms are in place to guard against anti-competitive behavior. GTE's mechanisms are not the same as those mandated for the BOCs. The issue here is whether the FCC will replace GTE's practical and successful good faith procedures with rigidly mandated and far more costly mechanisms.

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[4] Planned transactions recently announced would reduce the number of states served by GTE to thirty-seven. As shown *infra*, this will have no significant effect on the predominantly rural and dispersed character of GTE's serving territories.

Accordingly: Given the important differences between GTE and the BOCs recognized so many times in the past -- differences that are even more clear today -- and GTE's extraordinary record of conduct at the highest professional standard, discussed *infra*, GTE urges the FCC to reject applying to GTE the rigid mandate of the *BOC Requirements*.

II. THE SCARCITY OF COMPLAINTS AGAINST GTE -- AND EACH CASE EXAMINED ON THE MERITS -- TESTIFIES TO THE COMPANY'S HIGH PROFESSIONAL STANDARD OF CONDUCT.

GTE discusses *infra* three cases raised by ATSI (at 11-13) of alleged anticompetitive behavior on the part of GTE toward ESPs. In each case, GTE denies fault. But, in any event, given GTE's customer base of seventeen million, what is astonishing is the scarcity of complaints, whether meritorious or not.

The various parties arguing for imposition of the *BOC Requirements* have had many months to develop their ammunition by documenting anticompetitive behavior of GTE. Their efforts have produced a single new matter involving Ansavoice Communications Services ("Ansavoice"). As GTE shows *infra*, the Ansavoice matter is as groundless as the two older items raised again.[5] On a GTE customer base of seventeen million, all that could be found or created are these three isolated instances -- and in every one of the three GTE's conduct was blameless. If complaints of anticompetitive conduct on the part of GTE were alive, they would be an endangered

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[5] The Common Carrier Bureau recently notified one complainant, Voice-Tel of the Northwest ("Voice-Tel"), that its 1992 complaint would not be pursued further. "The Branch has reviewed your complaint file and is not prepared, on its own motion, to recommend further Commission action on your complaint." Letter to Voice-Tel's Robert F. Aldrich by Mike Hennigan, Carrier Analyst, Informal Complaints and Public Inquiries Branch, Enforcement Division, Common Carrier Bureau. The matter of C&J Tele-communications ("C&J"), which was never presented to the FCC as a complaint, is essentially a question of a C&J misunderstanding GTE's tariff. *See* complaint discussion *infra*.

species. As in 1987,[6] the extreme scarcity of any complaints whatever is strong testimony to GTE's active compliance with federal policy.

1. The Bureau had already advised Voice-Tel its complaint will not be further pursued.

On February 20, 1992, an informal complaint was filed with the FCC by Voice-Tel, an ATSI member. GTE has previously demonstrated that this complaint is without merit.[7] Voice-Tel's "anticompetitive and discriminatory" allegations with respect to a claimed incident of "unhooking" were disproved by a letter from the customer in question.[8] Voice-Tel also complained that a call transfer feature was not offered separately from GTE's centrex service. GTE's response was, and is, that this feature cannot be provided on a stand-alone basis by the switching equipment installed in GTE's network.

The facts of the complaint evidenced not a trace of anti-competitive action on the part of GTE. It is not surprising that Voice-Tel has been notified by the Bureau this complaint will not be pursued further.[9]

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6 *Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies*, CC Docket No.86-79 ("D.86-79"), Report and Order, 2 FCC Rcd 143 ("*D.86-79 Report & Order*"), *modified*, 3 FCC Rcd 22 ("*D.86-79 Modified Order*") (1987). The Commission found "that the record does not provide any support for [the] claim that GTE is discriminating against independent CPE vendors," and added: "The problems discussed ... are quite limited in number...." *D.86-79 Modified Order*, 3 FCC Rcd at 28.

7 *See* the letter dated August 28, 1992 from Carol L. Bjelland, Director, Regulatory Matters, GTE, to Pat Donovan and John Morabito, Common Carrier Bureau (the "*GTE Letter*") at Attachment E.

8 *Id.* A letter from the customer in question, Kay Hawkey of RE/MAX Associates, stated that: "[I]t is unfortunate that an unwarranted complaint was filed with the FCC. ...I can state unequivocally that the sales process ...was professional and ethical."

9 *See* letter of Mike Hennigan, Carrier Analyst, *supra.*

2. GTE was already providing under published tariff what C&J demanded.

ATSI claims (at 12-13) that GTE failed to provide to C&J of Honolulu, Hawaii "timely public disclosure of new network functionalities" since "GTE has no notification policies regarding discontinuance or change to a network functionality." In fact, at the time of the events in question as well as today, GTE was (is) offering on an unbundled tariffed basis just what C&J said it wanted. C&J could have found out what GTE offered by speaking to a GTE customer representative, or by checking GTE's tariff. ATSI's far-fetched claim amounts to saying GTE incurs the cost of a tariffed offering and then keeps that offering a secret from the very customers for whom the offering was created.

The problem started with C&J's misinformation. In November 1991, C&J sent a letter to the Hawaii Division of Consumer Advocacy alleging that GTE Hawaii provided only "clumsy, bundled" offerings for features necessary for voice messaging, and requesting that various "formal protections against anti-competitive" activities be established.[10] In fact, unbundled network services used by voice messaging providers were tariffed and effective September 17, 1990, some fourteen months before C&J's November 1991 letter.[11]

What C&J was seeking already existed. There is no indication that C&J was misled by GTE personnel, or indeed that C&J made any effort to find out what was being offered. GTE's service representatives answer millions of questions in a year of just this character concerned with the particulars of GTE's tariffed offerings and how the customer can best make use of those offerings. But they cannot provide this helpful guidance through the complexities of exchange carrier tariffs to someone who does not

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[10] *See GTE Letter* at Attachment F.

[11] Tariff approval by the state commission is a public process. The Hawaii Division of Consumer Advocacy did not oppose the GTE tariff.

call them. There is no reason to conclude C&J's failure to understand GTE's tariffed offerings was to be blamed on anyone other than C&J.

Nonetheless, to accommodate its customers and avoid problems in the future, GTE has now established a separate notification process for ESPs, and has specifically targeted voice messaging ESPs.[12] This is part of GTE's serious and ongoing effort to sell more network services to its customers. Far from wishing to keep its services a secret from the customers for whom it is designed, GTE is continuing its efforts to keep these generally knowledgeable customers informed of company offerings.[13]

All known voice messaging ESPs in Hawaii were mailed a notice in August 1992 informing them of GTE's network access capabilities that may be useful to voice messaging providers.[14] Included with this mailing was a questionnaire designed to help GTE network services personnel understand voice messaging providers' service offerings and existing network uses so that GTE network services could be revised or augmented as necessary.[15] C&J did not return the questionnaire.

ATSI further claims (at 13) that C&J was harmed by "the lack of required compliance on the part of GTE regarding the few CPNI regulations that already apply to RBOCs." GTE's Comments (at 44-52) demonstrate that GTE has procedures in place that provide protection equivalent to the *BOC Requirements* against anticompetitive

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12 *See GTE Letter* at Attachment G, Exhibit V and GTE Comments at Attachment L.

13 ATSI does not disclose the extensive subsequent communications between GTE and C&J regarding the availability of network services useful to C&J. GTE received and answered two data requests from C&J (June 5, 1992 and September 17, 1992). These covered the subjects of ONA, CPNI, and GTE voice mail services technical issues; and C&J characterized its inquiries as being on behalf of its trade association, ATSI. GTE provided copies of this correspondence to Commission staff. *See* letter dated October 19, 1992 from F. Gordon Maxson to Ms. Donna Searcy.

14 *See* GTE Comments at Attachment L.

15 *Id.*

action with regard to CPNI.[16] GTE is aware of no communication from C&J involving an assertion of any such action or of any formal or informal complaint dealing with CPNI. GTE's policy enforced throughout the company is to respond quickly to customers troubled by any aspect of GTE's behavior. But GTE cannot respond to customers that never express their concerns.

3. Contel of California did not "unhook" Ansavoice.

Mr. Eugene Constant of Ansavoice, located in Monterey, California, wrote to the California Public Utilities Commission ("CPUC") on December 27, 1991 concerning an incident in which a customer was allegedly "unhooked" when inquiring about the network features needed to enable a Ansavoice service offering.[17] The personnel of Contel of California[18] who were involved in the matter deny there was any attempt at unhooking or any other impropriety. GTE's investigation of the facts establishes the following.

Contempo Realty in Gilroy, California, an existing Contel centrex customer, was in the process of acquiring voice messaging service. Contempo had received a quote from Ansavoice, but had not signed a contract with any provider. Contempo contacted a Contel service representative to inquire about combining voice mail service with

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[16] In some cases, GTE procedures afford **better** protection from discriminatory behavior than the procedures implemented by the BOCs. For example, GTE does not use CPNI for enhanced services sales targeting.

[17] The CPUC did not issue a complaint since the service involved was not a regulated service. The CPUC did request that the service be offered under tariff, and Contel subsequently tariffed its voice messaging service at the same rate level.

[18] By order of the CPUC, Contel of California must be operated as a completely separate entity pending final CPUC approval of its merger into GTE. *In the Matter of the Joint Application of GTE Corporation and Contel Corporation*, Application 90-09-043, Decision 91-03-022 dated March 13, 1991, at Appendix C, "Conditions of Approval".

centrex service.[19] In the course of five or six telephone conversations, the Contel employee: (i) did not initially realize the person calling (a secretary employed by Contempo) intended to place an order, since the person seemed to be merely making inquiries; (ii) advised the person calling, in response to a number of questions, that Contempo already had centrex service; (iii) as requested, provided the person calling with factual operational details and pricing information. There was no effort on the part of Contel personnel to take unfair advantage. They were simply attempting to be responsive to an evidently unsophisticated customer -- which is part of the day-to-day job of service representatives. Contempo made the decision to order voice messaging service from Contel for $5.95 per line per month rather than from Ansavoice for $10.00 per line per month.[20]

In the fourteen months since initiation of the instant proceeding was discussed at an FCC Public Meeting, all that those arguing for imposition on GTE of the *BOC Requirements* have been able to come up with is a single miniscule transaction. Three thousand GTE service representatives handled almost twenty million customer contacts in 1992. The universe of potential wrongdoing -- where there might be a chance of unhooking or other anticompetitive behavior -- would embrace a substantial portion of those twenty million contacts. Even if it were assumed that Mr. Constant's version of the incident is correct, the percentage of GTE's failure would be infinitesimal. If anything is proved, it is that GTE's in-place and operating procedures, designed to

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[19] Mr. Constant could have asked for a letter of agency that would allow his firm to order network services on behalf of Contempo. Contempo Realty apparently desired to explore all options before ordering service from Ansavoice.

[20] Contel had an internal policy that prohibited unhooking. In addition, during the GTE/Contel merger process, all Contel employees, including the employee involved in the Ansavoice incident, were required to read and understand the GTE Antitrust Guidelines (*see* GTE Comments at Attachment N, page 7) which specifically prohibit unhooking. After receipt of Mr. Constant's letter, Contel management investigated the actions of the employee involved and were satisfied that the employee acted properly. GTE counsel investigated again for purposes of preparing this pleading.

assure compliance with the highest professional standard, are working successfully. Arguments that this justifies imposing restrictions on GTE cannot be taken seriously.

In summary: GTE denies anticompetitive activity in the one new and two old cases raised by ATSI. In one case (Voice-Tel) the Common Carrier Bureau has indicated it will not pursue the matter further. In another (C&J), what the customer demanded was already being offered by GTE. The single miniscule transaction involved in the Ansavoice matter cannot be taken to indicate a pattern of anticompetitive behavior. The scarcity of complaints against GTE, now as in 1987, supports GTE's position that it does not act in an anticompetitive manner.

III. MCI'S THEME -- THAT COSTS IMPOSED ON EXCHANGE CARRIERS ARE A FREE GOOD -- DOES NOT JUSTIFY REQUIRING GTE TO SPEND MILLIONS ON MAKING OSS AVAILABLE TO ESPs WHEN THE COMMISSION'S SAME-FORM-OF-ACCESS REQUIREMENT IS ALREADY BEING MET.

MCI (at 7) claims that GTE's explanation of the Voice-Tel complaint is proof that ONA requirements "should be applied fully."[21] "When it comes to ONA," MCI announces (at 7), "GTE clearly just doesn't get it." MCI insists (*id.*):

> The whole point of ONA is to make features such as call transfer available independently of other network services so that ESPs can take just the features they need to provide their own services.

As demonstrated in GTE's Comments (at 67 and Attachment U), GTE is introducing ONA services at the same general level as the BOCs. Further, a gap in MCI's argument appears in its own statement (at 5) that "the ONA rules allow for sufficient flexibility to accommodate variations in population density and geographic

super-ONA requirement MCI has in mind -- along the lines of *Field of Dreams*' "build it and they will come." Under the Commission's rule -- not MCI's -- an obligation to unbundle existing offerings, or create new offerings, is dependent on meeting four criteria (the "*Feasibility Criteria*").[23] Nothing in the ONA rule -- if it applied to GTE -- would oblige the company to discard existing equipment in order to increase options where, as in the Voice-Tel case, that switching equipment lacks the technical capability and insufficient demand exists to warrant modifying the switching software.

MCI's submission expresses very clearly its principle theme: The imposition of regulatory requirements on exchange carriers is a species of "Free Good." As in the case of using (it used to be believed) air, there are no costs attached to placing burdens on exchange carriers. "[L]ike chicken soup, [it] can't hurt." MCI at 5.

MCI's flippant words blend in nicely with its theme. Even though ONA would produce only "minimal benefits" the Commission should apply its requirements to GTE "simply because the cost of applying ONA to GTE is so slight that even the minimal benefits that will be derived from applying ONA to GTE will be justified." *Id.* at 4. The "feeble protections" at issue are not worth much, but they should be imposed anyway. *Id.* at 5. "Whether or not it is applied to GTE will not make much of a difference, but there is no reason not to apply the ONA requirements and related nondiscrimination rules to GTE, given the minimal cost." *Id.* at 10.

To make these statements with a straight face, MCI ignores the many millions of dollars in costs GTE has said on the record it will incur -- shown clearly in the *GTE Letter* (at n.2) and in the *Notice* itself (7 FCC Rcd at 8667 n.28). Similarly, MCI insists (at 6), GTE "never explains ... why ... it would be onerous or otherwise inappropriate to be covered by those rules." Having ignored facts clearly stated in the record and in the *Notice*, MCI expresses puzzlement.

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[23] *BOC ONA Order*, 4 FCC Rcd at 207. The four criteria are market demand, costing feasibility, technical feasibility and utility as perceived by the ESPs.

MCI does this again (at 8-9) with regard to OSS access. It says: "GTE never explains ... why ESPs should not have the same access to OSS functions that GTE's own enhanced services have." As described in GTE's Comments (at 57-58), the company's practices already conform to the Commission's "same form of access" requirement for order entry/status and trouble reporting/status OSS systems because neither affiliated nor nonaffiliated ESPs have OSS access. And as GTE explained in 1992[24] and now has explained again,[25] if GTE has to modify its OSS software to create mechanized access, it will cost many millions of dollars. GTE has in place a simple, inexpensive and effective mechanism to protect against anticompetitive action. This must be replaced, insists MCI (at 9), with a sophisticated and costly system – even though MCI says the benefits would be minor. Again, MCI sees exchange carrier resources as a kind of Free Good.

Imposition of a requirement for GTE to modify the OSS software would violate the Commission's own *Feasibility Criteria* for the unbundling and offering of ONA services. A mandate to provide ESP access to GTE's OSS would fail to satisfy at least three of these interrelated criteria: market demand, technical feasibility, and costing feasibility. Because of the multiple OSS systems that currently exist, to provide ESP access to each separate OSS system would require GTE to overcome significant technical hurdles. There having been no demonstration of demand, the costs of doing so would exceed any likely increase in revenue.

Of course, these criteria are exactly what MCI refuses to accept. Exchange carriers exist, as MCI sees it, not as managed private enterprises investing their resources where it would prove the most profitable but as providers of a Free Good -- something like the village well. For MCI, whether anyone is willing and able to pay for

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24 *GTE Letter* at Attachment G and Exhibit 6.

25 GTE's Comments at 53-56.

new or unbundled service offerings by exchange carriers is a matter of no interest. Since existing ONA offerings are, according to MCI (at 1), underutilized, they should be unbundled still further -- with no obligation whatever on the part of the beneficiaries to pay for the generation of alternatives that they choose not to take. It is a perfect expression of MCI's Free Good logic. Economic negatives can be dropped on exchange carriers to infinity. The beneficiaries of government action must bear none of the adverse consequences.

GTE suggests what matters is not MCI's vision of a world that exists for the benefit of MCI. What matters is sensible application of the Commission's policies. Even in the case of the BOCs, their ONA obligation is bounded by specific criteria. As stressed *supra*, GTE is -- without an ONA requirement -- already matching the BOCs' ONA efforts. And GTE would be willing to provide ESP access to OSS if it were an economically viable offering -- which is tantamount to the meeting of the ONA criteria. What GTE cannot justify is very costly blanket modifications to OSS without some prior indication that the resulting service will be desired at a price that will cover the cost of those modifications.

GTE is actively engaged in meeting the needs of its customers. For example, GTE is developing an OSS Access Customer Gateway ("ACG") system.[26] The ACG is designed to meet the needs of IXCs. Its initial capabilities include access to order entry/status and trouble reporting/status systems. Access customers that also offer enhanced services may find this system of use for their enhanced service offerings. This effort is being undertaken, not because of a Commission mandate, but to satisfy **demonstrated** IXC customer needs. If it can be demonstrated that *bona fide* needs of ESPs exist that cannot be met by ACG, and that there are ESPs ready and willing and able to pay for the associated cost, GTE would be happy to provide the service.

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[26] *See* GTE Comments at 55-56.

But ESPs displaying any real interest under these circumstances have not appeared. Such parties as trade associations and MCI file with the FCC their usual pleadings of the Free Good philosophy calling on the Commission to oblige GTE to make large expenditures completely unassociated with any thought of how the cost will be recovered.[27] Neither MCI nor any other party filing in this CC Docket No. 92-256 ("D.92-256") made any effort to show that, if the *BOC Requirements* applied to GTE, the investment required to offer OSS access to ESPs would be justified by demand -- in other words, that the FCC's four *Feasibility Criteria* would be satisfied. In today's competitive environment, there should be banished once and for all any residue of the notion that exchange carriers can simply continue absorbing such costs.

But MCI's theme continues. Costs imposed on exchange carriers don't count. They are a Free Good. It doesn't matter if the expenditure makes not a particle of sense. "[L]ike chicken soup, [it] can't hurt." MCI (at 5).

In summary: The Commission should reject MCI's arguments founded on a Free Good philosophy. GTE is already in compliance with the "same form of access" requirement in that access to OSS is not offered to its affiliated ESP or any other ESP. Neither MCI nor any other party has made any effort to show providing OSS access for ESPs would be technically or economically viable under the FCC's four ONA *Feasibility Criteria*.

IV. NO PARTY CHALLENGES THE CONCLUSION THAT, UNDER THE CRITERIA APPLIED BY THE FCC IN THE PAST, THE ARGUMENT FOR SEPARATE TREATMENT OF GTE IS NOW EVEN STRONGER.

GTE's Comments (at 17-23) stressed that on four occasions the Commission has closely examined GTE in comparison to the BOCs, and the anti-trust court has done the same. In every case the outcome was a conclusion that important differences

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[27] *See* ATSI at 11; Information Technology Association of America ("ITAA") at 2-3; National Association of Broadcasters ("NAB") at 3.

that deny GTE the opportunity and incentive to engage in anti-competitive conduct justify different treatment. Further, GTE's Comments (at 23-28) showed in detail that the totality of these BOC/GTE differences as they stand today represents an even stronger case than the Commission accepted in the past to justify different regulatory treatment of GTE.

In terms of the criteria applied by the FCC on four occasions and by the antitrust court, none of the filed comments even make the argument that the critical BOC/GTE differences have diminished. The arguments presented by filed comments do no more than affirm the FCC's tentative conclusions, which were based on criteria the Commission expressly rejected on four previous occasions. Thus, the sheer size of GTE is the primary reason given both by the *Notice* and by filed comments,[28] even though the FCC time and again concluded sheer size is not a determinant.

The arguments of ITN (at 10-11) illustrate single-minded stress on GTE's size: "The argument that GTE's addition of [Contel's] $3.4 billion in total revenue, 2.7 million in access lines, and 1,700 local exchanges makes the need for ONA and nondiscrimination safeguards less compelling, collapses of its own weight." Far from collapsing of its own weight, the Contel merger reinforces GTE's case in terms of the very criteria applied in the past. Both the FCC and the antitrust court very specifically discussed sheer size and focused instead on factors more relevant to the question of anticompetitive action.

"[A]n analysis of GTE's service areas," said the FCC in 1987, "demonstrates that although in the aggregate GTE is similar in size to each BOC, unlike the BOCs, its service areas are distributed nationwide in a large number of noncontiguous

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[28] Filings that place heavy reliance on GTE's size include: ITAA at 2-4; ATSI at 11; NAB at 3-5; Independent Telecommunications Network, Inc. ("ITN") at ii-iii, 3, 5-11; General Services Administration ("GSA") at 4.

geographic areas."[29] "[C]ompared to the BOCs, GTE service areas tend to be smaller (fewer access lines per exchange), less densely populated (fewer access lines per square mile), and they contain a smaller percentage of business customers."[30] The Commission concluded: "This circumstance effectively prevents GTE from exercising monopoly control in large regions of the country, comparable to those served by the BOCs."[31] The Contel merger means to an even greater degree GTE's "service areas are distributed nationwide in a large number of noncontiguous geographic areas."[32]

Similarly, the court emphasized that: "[W]hile the Bell Operating Companies serve the vast majority of the high-density, heavily populated metropolitan areas..., the GTE Operating Companies serve primarily the nation's rural and suburban areas."[33] As to all of the factors considered by the FCC and the court, post-Contel GTE is more rural, more dispersed, further removed from exercising the kind of control the BOCs exercise.

ITN argues (at 9) "that GTE's operations are predominantly rural means that the tolerance for cross-subsidization by GTE of its enhanced service operations is far greater than a company subject to potential market entry in an urban environment."[34] ITN insists (*id.*):

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29 *Phase II Order*, 2 FCC Rcd at 3101.

30 *Id.*

31 *Id.*

32 *Id.*

33 *United States v. GTE Corporation*, 603 F.Supp. 730, 734 (D.C.D.C. 1984), footnote omitted.

34 In any case, a formidable barrier against any cross-subsidy by GTE is the FCC's cost allocation rules. *See Separation of costs*, CC Docket No. 86-111, Report & Order, 2 FCC Rcd 1298 (1987); *modified by* Order on Reconsideration, 2 FCC Rcd 6283 (1987); *further modified by* Order on Further Reconsideration, 3 FCC Rcd 6701 (1988); *aff'd sub nom. Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990).

> While it is true that the GTOCs are not a dominant force over a large contiguous region in the same manner as the BOCs, it is also true that their customers are less likely to be an attractive target for competitors....

This argument turns upside down the analysis the Commission has applied in the past. Logically it would lead to heavier restrictions on companies serving more rural, more dispersed areas -- and especially those without such legal restrictions as the MFJ or GTE Consent Decree.[35] This would lead to the absurdity of subjecting to the *BOC Requirements* the exchange carriers that own ITN.

The Commission in the past has been far more realistic in approaching the question. Where populations are dispersed, the serving company has a thin base of revenue to use for "cross-subsidy." Imposition of heavy implementation costs on a rural operation with few customers could have the effect of removing the exchange carrier from the offering of enhanced services if that would precipitate those costs. This would operate precisely opposite to the Commission's objective, since it would deprive rural areas of enhanced services provided by anyone.

As an illustration: There has never been a Commission policy preventing a single GTE employee from marketing network services, Enhanced Services and Customer Premises Equipment. In areas of dispersed population, where a separate sales person for each product is not economic, this is the only practical approach. But replacing GTE's common-sense mechanisms for guarding against anticompetitive conduct with rules developed for the BOCs could imply a new restriction for GTE tantamount to a separation requirement -- an outcome at odds with the whole thrust of Commission policy putting aside separation requirements even for the BOCs. Until now, the Commission has always looked at the varying impact of restrictions on GTE as opposed to the BOCs, as well as the need for restrictions where a dispersed operation

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[35] *See* ITN at 9-10.

serving rural areas does not have the means to control the market. GTE suggests the Commission should continue to apply this sensible approach.

The Contel merger did not add to GTE a single serving area similar to Atlanta or San Francisco or Fort Worth. What was added was a great number of dispersed rural serving areas.[36]

As pointed out by GTE's Comments (at 34-39), any proposal to impose the *BOC Requirements* on GTE should be grounded on an understanding of these realities: (i) GTE's market position is far less favorable than that of the BOCs; (ii) the proportionate cost impact on GTE would be far greater; and (iii) GTE's ability to engage in anti-competitive activity is far less. The *BOC Requirements* imposed on GTE would generate significant tangible and intangible costs with little or no offsetting benefits. All of these harsh realities for GTE relate to its position as a broadly dispersed and primarily rural company. These factors should once again lead the FCC to conclude important differences between GTE ad the BOCs warrant different treatment.

In summary: Under the criteria applied by the FCC in the past, and in view of the limitations placed on GTE as a predominantly rural exchange carrier, the Commission should decide the *BOC Requirements* should not apply to GTE.

V. NO PARTY SHOWS ANY ONA/CEI BENEFIT THAT IS NOT CURRENTLY BEING PROVIDED WITHOUT IMPOSITION OF A RIGID AND COSTLY MECHANISM.

GTE's Comments (at 40-69) showed that its customers are already receiving the benefits of ONA/CEI; and that there is no significant incremental benefit to be derived from imposing the costly and burdensome *BOC Requirements* on GTE. The imposition on GTE for the first time of the *BOC Requirements* demands a supporting analysis that

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[36] The same would be true for BellSouth if it were to acquire GTE. By comparison, GTE is far more dispersed than BellSouth, just as Contel was far more dispersed than GTE. *See* ITN at 11.

shows this action can be expected to yield net public interest benefits. The submissions of the parties contain no such showing.

1. No party has shown that there is a need for application of the BOC network disclosure rules to GTE.

The Commission's network information disclosure objective is to "address the potential ability of these carriers [AT&T and the BOCs], in the absence of structural separation to design new network services or change network technical specifications to discriminate against their enhanced service competitors and favor their own enhanced service operations."[37] This includes disclosure "at the point of a make/buy decision if joint research and development is conducted by enhanced services and network services personnel."[38]

To achieve this objective, the Commission adopted network information disclosure rules that bound AT&T and the BOCs. "[S]tarting at the time that AT&T and the BOCs begin joint planning, research or development of enhanced services, they will be required for all new network services or changes to existing services that affect the interconnection of enhanced services with the network, to notify the enhanced services industry that such a change is planned."[39]

This notification process is already established by AT&T and the BOCs and will continue regardless of whether the *BOC Requirements* are imposed on GTE. Thus,

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37 *Phase II Order*, 2 FCC Rcd at 3087.

38 *Phase I Order*, 104 F.C.C.2d at 1081.

39 *Id.* "Such notification will take place at the time AT&T or any BOC makes a decision to manufacture itself or to procure from an unaffiliated entity, any product the design of which affects or relies on the network interface. 'Products' in the enhanced service context includes any hardware or software for use in the network that might affect the compatibility of enhanced services with the existing telephone network or with any new basic services or capabilities. 'Products' also includes any hardware, software, or services that rely on the network interface." *Id.*

the "enhanced services industry" is already being notified of planned changes. Is there a need for GTE to provide an additional notice to the industry?[40]

The BOCs later were required to disclose, at two different points in time, information about changes in their networks or new network services that affect the interconnection of enhanced services with the network.[41]

First, at the make-buy point. When a BOC decides to make itself, or procure from an unaffiliated entity, any product the design of which affects or relies on the network interface, the BOC must notify the enhanced services industry of the new or changed network service, and must disclose technical information about the new or changed service to those members of the enhanced services industry that execute a non-disclosure agreement. The BOC must provide this information within thirty days of the execution of such an agreement.

Second, at the twelve-month point. Twelve months before a new or modified network service is introduced, a BOC must publicly disclose technical information about the service. If the BOC can introduce the service within twelve months of the make-buy point, it may make a public disclosure at the make/buy point, but not less than six months before the introduction of the service.

As mentioned *supra*, AT&T and the BOCs have in place procedures to provide these notifications to the ESP industry. Is there a need for an additional set of reports by an additional party, GTE? Would another set of reports provide any important value that justifies the cost of mandating a GTE reporting program?

The thrust of GTE's Comments (at 63-69) is that GTE does not lead the industry in creating new network functionalities. For many reasons, the design and creation of new network functionalities is carried out not by GTE but by the BOCs and Bellcore. In

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[40] *Id.* at 1083-84.

[41] *See BOC ONA Order*, 4 FCC Rcd at 252.